



# Workers' Compensation and Disability Retirement within the CHP

## Year-End Progress Report

July through December, 2005

In September 2004, sudden media attention was thrust upon the California Highway Patrol (CHP) and its involvement with rising workers' compensation costs. Specifically, articles focused on industrial disability retirement and the use, and possible abuse, of this benefit by CHP upper management and subordinate uniformed ranks. Upon his appointment as new CHP Commissioner, Commissioner M. L. Brown promised Governor Schwarzenegger a thorough review of the Department's workers' compensation and disability retirement programs. Contained in the resulting report to the Governor were a total of 21 recommendations designed to help curb rising workers' compensation costs and help prevent fraud and abuse of these vital employee benefits. This is the second of recurring progress reports that will highlight the activities completed toward the implementation of each of the report's recommendations.

### **General Accomplishments**

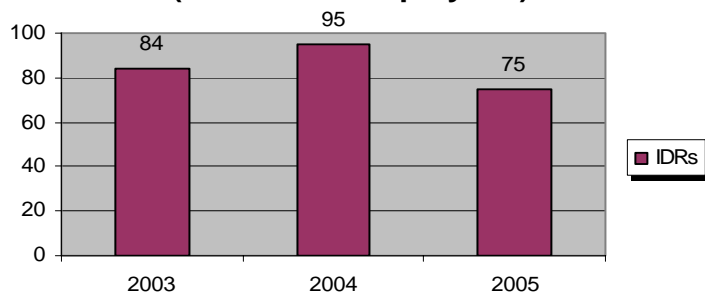
- In January 2005, a CHP officer was arrested for workers' compensation fraud and was dismissed from the Department. In December 2005, he was subsequently convicted of seven counts of workers' compensation fraud and related charges. He is scheduled for sentencing in January 2006.
- Since July 2005, the Workers' Compensation Fraud Investigation Unit's (WCFIU) toll free tip-line and website continue to provide tips/leads for future potential fraud investigations. During 2005, seven tips/leads were received through the website and 14 were received through the Department's toll free tip-line
- Since July 2005, the WCFIU continues to investigate suspected workers' compensation fraud and has received 107 tips/leads during 2005. Of those tips/leads, 15 have been investigated and closed, after determining no fraud existed. Twenty-four cases were opened and are currently being investigated. Three cases are in the preliminary stage to determine if further investigation is warranted. Many other cases that were received in 2004 were also closed after determining no fraud existed, while other cases received in 2004 continue to be investigated.

In April 2005, investigators from the WCFIU developed information, which potentially explained the commonly known phrase of "Chief's disease" and which also, raised concerns of potential criminal misconduct. As a result, the Department approached the Sacramento County District Attorney's office to conduct an objective and independent investigation into potential wrong doing. The Department continues to cooperate and provide resource assistance to the District Attorney's office. Currently, there is no projected timeframes for completion.

A major obstacle relative to investigating allegations of worker's compensation fraud is the difficulty in proving the allegations. The initial phase of the investigation, which requires obtaining and reviewing all relevant documents (medical reports, transcripts, and case management files, for example) can be extensive. Furthermore, investigators require contemporaneous statements to prove certain allegations and these statements are derived from the case management and the medical appointments, which can transcend many months. Once a case is determined to be viable, then extensive fieldwork is performed which includes surveillance and interviewing witnesses. Upon completing the investigation, the file is submitted for consideration and, as a result of its complexity, a decision to go forward may take several months.

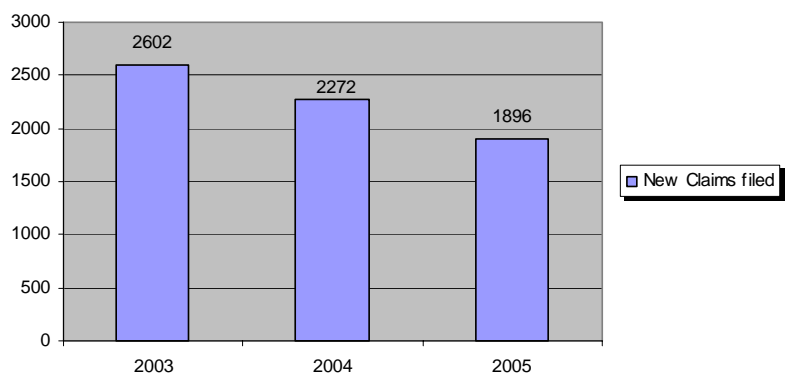
- In October 2005, a CHP officer was dismissed for workers' compensation fraud. The investigation was submitted to the District Attorney's office requesting the filing of criminal charges. The District Attorney's office has been working with the Department and criminal charges are expected.
- In November 2005, the WCFIU began receiving the names of all departmental employees who submit an application for disability retirement. A preliminary review of each application is conducted for the purpose of screening for potential workers' compensation fraud. If no indication of potential fraud exists, no further action is taken. However, if indications of potential fraud exist, further investigation is conducted by the WCFIU.

**Industrial Disability Retirements Filed  
(Uniformed Employees)**



- In 2005, there were 75 uniformed employees who filed for an industrial disability retirement (IDR). This is a 21 percent decline compared to the number who filed in 2004, and an 11 percent decline compared to the number who filed in 2003.
- Since January 2005, six CHP chiefs have retired. They all service-retired; none applied for an industrial disability retirement.

**New Workers' Compensation Claims Filed**



- During the 2004/05 fiscal year, the Department of Personnel Administration's figures show a 4 percent reduction in CHP workers' compensation costs compared to the 2003/04 fiscal year (from \$67.8 million to \$64.9 million). The CHP believes greater

reductions were hindered by an increase in maximum benefit rates awarded for both temporary and permanent disability benefit payments for injuries occurring in 2004 and 2005. In the case of permanent disability, the benefit increases have been significant in some cases as more severe injuries are awarded much higher benefit rates. Just a few severe injury claims can have a significant cost impact. For example, in late 2004, three departmental injury claims resulted in more than one million dollars in medical expenses.

- In 2005, there was a 17 percent drop in the number of new workers' compensation claims filed compared to 2004 (from 2,272 to 1,896), and a 27 percent drop compared to 2003 (from 2,602 to 1,896) This does not include any cases that were reopened.
- In December 2005, the Department submitted a report to the Joint Legislative Budget Committee in response to direction contained in the Supplemental Report of the 2005 Budget Act. The Department was directed to investigate the reasons for an apparent difference in IDR rates between high-ranking uniformed personnel and lower-ranking personnel. The Department was also directed to include the goals and performance measures that will be used to assess the success of its efforts to reduce workers' compensation costs and IDR claims and costs. The Department found no clear, objective reasons for differences in IDR rates among higher- and lower-ranking personnel. The report did discuss more subjective observations, including the financial incentive to retire on disability coupled with a sense of "entitlement" among uniformed employees, and inconsistent case management practices among personnel at higher ranks. The report discussed the challenge of changing these elements of departmental culture and the steps it has taken and will take in the future to remedy these practices.

In the following paragraphs, each recommendation is taken verbatim from the CHP's report to the Governor, followed by the activity completed during the months of January through June, 2005.

### **Internal Actions**

1. **"Limited Duty Assignments. The use of limited duty assignments (with an appropriate medical release) for specified employees pending Industrial Disability Retirement (IDR) is being reviewed for possible expansion. Often employees file for IDR while on paid medical leave (4800.5 time)<sup>1</sup>. Bringing these employees back to work and placing them on limited duty status would stop their entitlement to 4800.5 benefits, thereby reducing departmental costs for tax free disability payments. Then, once the employee's IDR is approved by CalPERS, the employee could be separated from the organization, bringing about additional savings to the Department in reduced 4800.5 benefit costs. We would also explore and implement a policy to articulate which assignments employees on limited duty could perform."**

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<sup>1</sup> This refers to California Labor Code Section 4800.5, which provides full salary, tax free, for up to one year to CHP uniformed employees who are *temporarily* disabled as a result of an industrial injury.

#### *Activity this Period*

On October 6, 2005, Personnel Management Division (PMD) and DRS met with Executive Management to discuss the policy. At this meeting, direction was provided by Assistant Commissioner, Staff (AC Staff) to provide more detailed information on limited duty assignments. Additionally, AC Staff requested a revision to the current medical restriction procedures needed to determine if limited duty assignments are medically appropriate.

On December 9, 2005, communication was sent to all commanders reminding them of departmental policy relating to duration of limited duty assignments. Additionally, a revised policy that incorporates the use of up to two years of limited duty is now being considered by members of CHP Top Management.

2. **“Internal Approval Authority. The Department is evaluating its internal authority process for the settlement of workers’ compensation claims. This lengthy internal process can cause problems with meeting the 10-business day approval requirement imposed by the State’s Master Agreement.”**

#### *Activity this Period*

On February 16, 2005, an issue paper was submitted to AC Staff with suggested revisions to the current settlement authority approval process. The issue paper recommended that all requests for stipulated awards be approved by DRS. Prior policy was that DRS had authority to approve settlements up to 49.75 percent permanent disability, PMD had authority to approve settlements up to 69.75 percent permanent disability, and settlements above 70 percent permanent disability required approval by AC Staff. On March 3, 2005, AC Staff partially approved the recommendation and provided PMD with authority to settle claims up to 100 percent permanent disability. ***This recommendation has been fully implemented.***

3. **“Policy Compliance. Emphasis has begun, and will continue, for strict compliance and enforcement of departmental policies relative to completion of required injury documentation, and specifically the CHP 121D, Injury/Illness Status Report. Further, existing policy is being revised to require monthly reporting of injury status by commanders of their employees, inclusive of months when no employee is on injury status, otherwise known as ‘negative reports.’”**

#### *Activity this Period*

A revision to HPM 10.7, *Injury and Illness Case Management*, Chapter 2, *Case Management*, was submitted to, and approved by, AC Staff. To help increase accountability on the part of commanders and their responsibility for proper case management, the revision requires the submission of negative reports along with any pertinent updates to current cases. ***This recommendation has been fully implemented.***

- 4.

**“Consistent and Timely Division Review of Area Case Management Practices. The Commissioner’s Office currently provides “Quarterly Reports of Open Workers’ Claims” to each Division commander for their respective commands. The Department will now provide these reports on a monthly basis to improve management review and follow up. Further, a standard Division review protocol is being developed to ensure that local commands use their report to actively review injury claims on a monthly basis. Finally, this new process will include a comparison between the CHP 121D and the new monthly report of open injury claims to ensure compliance with case management policies.”**

*Activity this Period*

DRS submitted to AC Staff a revision to HPM 10.7, *Injury and Illness Case Management*, Chapter 2, *Case Management*, on March 30, 2005. DRS also provided a written request for an automated report system to IMD on April 18, 2005. This report requested the development of an automated system to generate a “Monthly Report of Open Workers’ Claims.” On April 26, 2005, DRS received an update from IMD stating a “Priority 2” had been assigned to this project with a completion date of March 31, 2006. The manual revision is completed and awaiting final approval based on IMD’s ability to generate the monthly report as requested. The manual revision will provide direction to Divisions on their responsibility to provide an ongoing review of each command’s case management.

5. **“Legal Counsel Position. The Department will explore the feasibility of a budget change proposal seeking a legal counsel position, designated as an expert in, and solely dedicated to, departmental cases related to workers’ compensation, retirement, recruitment, and equal opportunity. Such a position would provide immediate access to, and timely review of workers’ compensation matters that may be outside the technical expertise of current Disability and Retirement Section staff.”**

*Activity this Period*

In September 2005, the budget change proposal for this position and six additional support positions was submitted to the Department of Finance and ultimately included in the Governor’s Budget for fiscal year 2006/07. In addition to the legal counsel position, the proposal seeks funding and position authority for a Staff Services Manager I, four Associate Governmental Program Analysts, and an Office Technician. The additional positions will address the increased workload related to workers’ compensation and disability retirement case management and provide technical assistance to all commands in support of the Department’s injury and illness case management procedures. This workload has increased in volume, variety, and legal complexity beyond the capacity of the current staffing level.

6. **“Disability and Retirement Section Database. A modified Disability and Retirement Section database must be developed to include additional statistical information about workers’ compensation claims and industrial disability retirements (IDRs).**

**Such a database should be easily navigable and include information which could serve as indicators of potential fraud. The database recently developed by the workers' compensation audit task force will be used as a starting point in the development of this new database. Information contained in these files will also be accessible to field commands upon request."**

*Activity this Period*

A team of technical personnel was created to address the issues associated with this recommendation. It determined that this task could be accomplished by applying modifications to the existing Health and Safety System (HSS), and development or acquisition of a case management system for fraud investigations. Ongoing analysis continues of what database features may be needed by DRS and WCFIU and how those features should be incorporated into HSS modifications. Personnel from DRS and IMD last met in November 2005 to discuss this issue and the activities to be accomplished in the coming year.

- 7. "Workers' Compensation Fraud Unit Database. A more expansive, confidential database should also be created for the exclusive use of the Workers' Compensation Fraud Unit. This database will be utilized to conduct trend analyses, and to track fraud investigation cases from initial investigation to prosecution and/or adverse action."**

*Activity this Period*

A database has been developed by IMD for the sole use of the WCFIU. After lengthy development and testing, the database became operational in October 2005, and is currently being used by the WCFIU. The database allows the WCFIU to track workers' compensation fraud investigations from the initial tip/lead to the conclusion of the case. It also allows for complex trend analysis using a variety of search criteria, such as rank, command, Division, how the tip/lead was received, tenure of the employee, age of employee, type of injury and other criteria, as well as any combination of search criteria. *This recommendation has been fully implemented.*

- 8. "Policy. Policy will be developed to provide further guidance for processing of "questionable" injury claims. Specifically, a policy will be provided on handling of claims that appear to be fraudulent."**

*Activity this Period*

During this period, a separate chapter containing policy on workers' compensation fraud was drafted for inclusion in HPM 10.7 *Injury and Illness Case Management*. The draft policy provides information on what constitutes fraud and includes indicators of possible fraud or abuse for use by command personnel. It also provides procedures for commanders to follow should any indicators of fraud be present. The policy has been completed and is now pending in the departmental review process.

9. **“Tipline/Website.”** The Department will explore the feasibility of establishing a toll free workers’ compensation fraud reporting hotline for suspected criminal activity by workers’ compensation claimants and/or disability retirees. The website could be utilized by both departmental employees and the public.”

*Activity this Period*

Both the toll-free tipline and the fraud-reporting website were initiated at the end of 2004. *This recommendation has been fully implemented.*

10. **“14 Critical Tasks.”** The Department will re-evaluate the 14 critical tasks (otherwise known as “performance measures”) required of all uniformed employees and make recommendations to the Commissioner as appropriate (see Annex J in the full report for a copy of these tasks).”

*Activity this Period*

During this quarter, consultants from Cooperative Personnel Services conducted on-site visits and interviews at specific geographical locations throughout the state. As a result of these visits/interviews, a survey was developed which will be finalized and distributed to a representative random sample of officers and sergeants in early 2006. Results of this survey will be utilized when reviewing the 14 critical tasks.

11. **“Self Administration.”** The Department will explore the feasibility of administering its own workers’ compensation claims, or replacing State Compensation Insurance Fund (SCIF) with a private insurer. Such an evaluation will explore means of reducing current multi-million dollar annual costs for open injury claims. This recommendation would follow an assessment of recently enacted workers’ compensation law. The threshold for this evaluation will be what is in the best interest of the state and taxpayers who fund workers’ compensation costs. If this proposal is adopted, additional in-house legal counsel would be required.”

*Activity this Period*

As an alternate to self-administration, the Department instead proposed to remain with SCIF under the Master Agreement, and consolidate all of the CHP’s claims into SCIF’s Sacramento office. Additionally, due to recommendations in an independent audit of SCIF, SCIF will reduce the size of their adjusters’ caseloads to an average of 150 claims per adjuster. The transfer of CHP injury cases to the SCIF Sacramento office has already begun and will continue until completion in July 2006.

The Department believed this consolidation would be the most viable option to contain and reduce workers’ compensation costs, and at the same time increase the level of service provided to the Department and its injured employees. The Department expects to see more uniformity of claims management since adjusters will be assigned specifically to CHP cases for their duration. The consolidation will also foster greater communication and more direct involvement and case strategy sessions between DRS staff and SCIF adjusters.

**12. “Occupational Safety. The Department will task its Occupational Safety Committee to explore and recommend new workplace safety programs with a goal of substantially reducing injuries to employees and reducing associated costs.”**

*Activity this Period*

The Departmental Occupational Safety Board (DOSB) was encouraged to provide meaningful suggestions on programs that could have a positive impact on reducing work-related injuries. The DOSB created a committee to review the proposed safety programs/processes that were submitted. From the ideas submitted, 15 recommendations were submitted to Executive Management for approval and implementation. Those recommendations have either already been incorporated into departmental occupational safety training elements or are in the implementation process.

**13. “Departmental Awareness Campaign. An in-house awareness campaign will be developed which emphasizes integrity and honesty relative to injury and workers’ compensation claims. Awareness tools will include a means to express departmental values and expectations of employees with respect to this subject, the positive aspects of service retirement, the importance of proper case management, training of all employees, and wide dissemination of any departmental employee fraud cases.”**

*Activity this Period*

The WCFIU developed training blocks covering the issues in this recommendation for presentation to supervisors, managers, and commanders. In 2005, the 1-hour training blocks were added to the following classes:

- First Line Supervisor’s Academy: (6 classes).
- Middle Management Training Course: (4 classes).
- Command Course: (2 classes; the Command Course receives a 2-hour block of training).

For 2006, the same schedule will be provided, except for the Command Course, where 3 classes are proposed.

Topics covered during these instruction blocks include:

- Positive aspects of a service retirement.
- Importance of proper case management.
- Workers compensation fraud training to employees.
- Information dissemination of departmental fraud cases.

These program elements will also be featured during the March 2006 All Commanders Leadership Conference and are part of a continuing dialog with representatives from the California Association of Highway Patrolmen.



The WCFIU prepared quarterly segments for the Department's Solid Realistic Ongoing Verifiable Training (SROVT) program which will be disseminated throughout the state. SROVT is a situation-based training forum in which officers are faced with a realistic scenario or situation that may rarely be encountered, but which can have significant or dramatic personal and departmental impacts if handled incorrectly or poorly. Officers are tasked with working through the situation based on knowledge of departmental policy, procedures, previous training, and possibly character and integrity. Topics of these SROVTs address workers compensation fraud indicators, proper case management, departmental policy, and employee values and expectations regarding compensation claims.

- 14. "Reclassifying Injured Employees. The Department is exploring the feasibility of reclassifying the duty position of permanently injured uniformed employees, with the intent of returning the employee to duty in a vacant non-peace officer role."**

*Activity this Period*

A new chapter to HPM 10.7, *Injury and Illness Case Management*, has been developed which adds policy to assist commands in the proper use of the options letter currently used to notify employees who are unable to return to their usual and customary position, and of their employment and benefit options. This new chapter is expected to be published and distributed by May 1, 2006.

- 15. "Special Handling of Retirements. The Department is developing policy to make clear that an employee's retirement eligibility shall not be considered when an adverse action, or separation due to injury, is being considered by the Department."**

*Activity this Period*

In February 2005, the CHP's Internal Affairs Section (IAS) revised HPM 10.2, *Internal Investigations*, to reflect that disciplinary action would not be based on retirement eligibility. *This recommendation has been fully implemented.*

- 16. "Amendment to HPM 10.2, Internal Investigations. Under the Public Safety Officers' Procedural Bill of Rights, the Department generally has one year to take final administrative action against a uniformed employee for acts of misconduct. The Government Code provides specified exceptions to this one-year period for complex investigations, workers' compensation fraud, and other criminal cases. For example, it extends the period to take adverse action against an employee to within three years of learning of the misconduct. The practical effect of the time limit is that the Department will likely be precluded from taking adverse action against an employee who retires before adverse action is taken, then reinstates several years later after the statute of limitations passes relative to "final administrative action." Although this happens infrequently, it nevertheless is a loophole in the system."**

#### *Activity this Period*

In February 2005, IAS revised HPM 10.2, *Internal Investigations*, to reflect that disciplinary action would not be based on retirement eligibility. Additionally, research established that a State Personnel Board precedent-setting decision granted jurisdictional rights of the employer to dismiss an employee who has separated as the result of a disability retirement. IAS has determined that this revision addresses the concerns raised by this recommendation. Therefore, no further policy revisions are necessary. ***This recommendation has been fully implemented.***

#### **External Actions**

1. **“Amend Labor Code 4658.6. Amend Labor Code Section 4658.6 to incorporate language specifying that injured employees who are eligible for maximum service retirement and opt to disability retire are not entitled to additional benefits other than medical costs related to the injury/disability. (This recommendation is specific to CHP IDRs and was part of the CHP’s recommended legislative changes in March 1996.) (Revised February 2005.)”**

#### *Activity this Period*

The Department sponsored Assembly Bill (AB) 804, LaSeur, to accomplish this and other related tasks. AB 804 was introduced on February 18, 2005, and, among other things, amended Section 4658.6 of the Labor Code to provide that an employer shall not be liable for the supplemental job displacement benefit if the employee is a peace officer with the Department and is eligible for the maximum service retirement benefit under Section 21362, 21362.2, or 21362.3 of the Government Code. The bill passed the Assembly and on June 2, 2005, was referred to the Senate Committee on Public Employees & Retirement (PE&R). It was later withdrawn and re-referred to the Senate Committee on Labor & Industrial Relations (L&IR). The bill was heard in L&IR on June 29, 2005, but a vote was not taken. Instead, amendments were offered and the bill was again re-referred to PE&R. After referral, it became a two-year bill.

2. **“Earnings Offset. Establish an earnings offset for IDR retirees employed outside CalPERS in an occupation requiring peace officer status, by restricting combined earnings (disability retirement plus outside earnings) to no more than the employee’s salary level upon retirement (similar to Government Code Section 21300). (This recommendation is specific to the CHP and was part of the CHP’s recommended legislative changes in March 1996.)”**

#### *Activity this Period*

This recommendation was being addressed through AB 804, LaSuer. The bill also added Government Code Section 21431 which would apply to a person who has become eligible for a maximum service retirement benefit. If the person takes an industrial disability benefit and subsequently becomes employed as a peace officer, the industrial

disability retirement would be converted to a service retirement. As stated above, the bill is currently a two-year bill.

3. **“Presumptive Injuries.** There must be a review of Labor Code Sections 3212 through 3213 to determine if the current list of presumptive injuries is tied to specific job-related injuries. An employee should not, for example, automatically qualify for a “presumption based” IDR if the medical review determines that the particular injury was unrelated to the employee’s specific job duties. (This recommendation is specific to the CHP.)”

*Activity this Period*

On October 6, 2005, PMD and DRS met with Executive Management to discuss the recommendations contained in the issue paper submitted in June 2005. At this meeting, the original recommendations of the issue paper were revised to focus on introducing legislation to require the legislature to review presumptive injuries. The revised issue paper was submitted to AC Staff on October 20, 2005. On November 16, 2005, AC Staff requested an additional review by DRS regarding the effects of workers’ compensation legislation on presumptive injuries. DRS will submit a report of the effects of the new workers’ compensation legislation to AC Staff by April 5, 2006.

4. **“Medical Evaluations.** With respect to CalPERS, after an IDR is approved, CalPERS has the responsibility to periodically review the current status of retirees. To accomplish this, CalPERS should periodically have independent medical evaluators re-evaluate, in a standardized format, the disability status of employees who are less than 50 years of age, which is the CHP’s eligibility age for service retirement. This could initially be done on a trial basis to determine if this process is beneficial in identifying disability retired employees whose medical status later improves to the point that they may be able to return to their CHP employment.”

*Activity this Period*

This issue is being addressed by legislation introduced by CalPERS. As introduced, SB 105 would revise this provision to make it applicable to any recipient of a disability retirement allowance who is less than 59 years of age. It would also provide that if a recipient of a disability retirement allowance who is over the minimum age for voluntary retirement for service applicable to members of his or her class, and who has been receiving a retirement allowance for less than 36 months, refuses to submit to a medical examination, the pension portions of his or her allowance may be discontinued until the withdrawal of the refusal.

The bill passed the Senate without a dissenting vote and made it to the consent calendar in the Assembly. On September 8, 2005, it was placed on the inactive file.

5. **“Amend Penal Code Section 1543(d):** Penal Code Section 1543(d) should be amended to grant the CHP access to relevant medical records associated with workers’ compensation and disability retirement cases that both SCIF and CalPERS have access to. (*Revised February 2005.*)”

*Activity this Period*

This recommendation was being addressed by AB 804, LaSuer. Under the bill, Section 1543 was to be amended to allow the CHP to access medical records for the purpose of conducting workers' compensation investigations. The bill was made a two-year bill.